IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.599 OF 2005

Udaysingh Sarjerao Jadhav — Appellant
vs.
Smt.Ashalata Gopalkrishna Gujar & ors. — Respondents

Mr.Vijay Patil for the appellant.

Mr.R.G.Ketkar for the respondent no.1.

Mr.R.V.More for the respondents 2 and 3.

CORAM : B.H. MARLAPALLE,J.

DATED : 29th August 2005

P.C.

Heard Mr.Patil, the learned counsel for the appellant-original plaintiff who has instituted Special Civil Suit No.160/2004 before the learned Civil Judge, S.D. at Satara for specific performance of the agreement dated 20.11.1992. In the said Suit, an application at Exhibit 5 for temporary injunction was filed and the same has been rejected on 21.2.2005. Being aggrieved by the said order rejecting the application at Exhibit 5 by the learned Civil Judge, S.D. at Satara, this appeal has been filed.

2. As per the plaintiff, the defendant no.1 had executed an agreement of sale on 5.11.1992 in his favour in respect of the agricultural land admeasuring 8 acres

and 1 guntha from the southern side of revised survey nos. 40 and 26 and the agreed consideration was Rs.96 lacs. However, in supersession of the said agreement a fresh agreement came to be signed on 20.11.1992 in respect of 7 acres out of 8 acres and 1 guntha of the land revised survey nos.40 and 26 for a total consideration of Rs.60 lacs. Though the suit land of 7 acres was jointly hold by defendant no.1 and her two daughters, defendants 2 and 3, the defendant no.1 had signed the agreement of sale dated 20.11.1992 on the basis of the Power of Attorney executed by both the daughters on 30.6.1970 and 16.8.1976 respectively. The plaintiff further contends that by 1.5.1993 he had paid a total consideration of Rs.7 lacs as against the agreed consideration of Rs.60 lacs and on account of the dispute between the tenants, the defendant no.1 could not proceed to take steps for signing of the sale deed. The defendant no.1 returned the amount of Rs.7 lacs by cheque on 2.7.1993 on the basis of notice of termination of the said agreement dated 2.6.1993. The appellant issued a public notice on 30.6.1993 and the same was replied by the defendant no.1 on 8.7.1993. R.C.S.No.361/1993 came to be filed before the Civil Judge, S.D. at Satara for partition and separate possession of half share in the suit property. One Tukaram G. Jagtap also instituted RCS Suit No.372/1993 against the defendant no.1 for partition and separate

possession of half share. It appears that these suits were compromised and the suit property remained with the defendants. Apprehending that the defendant no.1 may alienate the property, the plaintiff filed special civil Suit No.160/04 on or about 9.9.2004 for specific performance of the agreement of sale dated 20.11.1992.

3. The defendant no.1 filed written statement contending that the agreement dated 20.11.1992 was not an agreement for sale but it was in fact an agreement for development of the suit land in favour of the plaintiff through his developer/builder. The defendants 2 and 3 also contested the suit by filing reply and they stated that the Power of Attorney executed by them individually in favour of their mother was not for alienation of the land but it was special Power of Attorney to perform all the legal acts before the Court or any competent forum on their behalf and pay the taxes etc. in respect of the suit land and/or their respective share in the said land.

4. The learned Judge of the trial Court has noted that though the contentions of the defendant no.1 that it was not an agreement to sell could not be accepted prima facie, the possession of the suit land also remained with the defendants and prima facie, there was no evidence to show that the possession of the suit land

was parted with by the defendant no.1. In addition, the trial Court referred to Section 17 of the Special Relief Act, 1963 and noted that the defendant no.1 did not have the authority to sign an agreement for sale on behalf of her two daughters who are impleaded as defendants 2 and 3 and, therefore, prima facie the said agreement could not be executed against defendants 2 and 3.

5. The reasoning given by the trial Court in support of the impugned order refusing to grant temporary injunction cannot be termed as perverse or grossly erroneous so as to call for interference in this appeal. The order impugned does not suffer from any illegalities and, therefore, this appeal must fail at the threshold.

6. The appeal is hereby dismissed in limine. However, this order will not preclude the parties from holding negotiations for alienation of the suit land on the basis of revised terms and conditions, if any.

7. The trial of the Suit is hereby expedited.

8. Civil application does not survive.

(B.H. MARLAPALLE,J.)